



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0411; FRL-9931-56-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; 2011 Base Year Emissions Inventory for the Marshall, West Virginia Nonattainment Area for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the 2011 base year emissions inventory submitted by the State of West Virginia for the 2010 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). The emissions inventory was submitted to meet one of the nonattainment requirements for the Marshall, West Virginia nonattainment area (Marshall Area or Area) for the 2010 1-hour SO₂ NAAQS. EPA is approving the 2011 base year emissions inventory for the 2010 1-hour SO₂ NAAQS for the Marshall Area in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on **[insert date 60 days after publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0411 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov
- C. Mail: EPA-R03-OAR-2015-0411, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0411. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal is available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of West Virginia's Submittal
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

In June 2010, EPA promulgated a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations does not exceed 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. *See* 40 CFR 50.17(a)-(b). On August 5, 2013, the EPA designated 29 areas of the country, including the Marshall Area, as nonattainment for the 2010 SO₂ NAAQS (77 FR 47191). The Marshall Area is comprised of Clay, Franklin, and Washington Tax Districts in Marshall County, West Virginia.

An area designated as nonattainment for the 2010 1-hour SO₂ NAAQS is required to submit a nonattainment SIP to EPA meeting the requirements of subparts 1 and 5 of part D, of Title I of the CAA, providing for attainment of the NAAQS by the applicable statutory attainment date. *See* CAA sections 172 and 191-192. These SIPs are required to provide for future attainment of the 2010 1-hour SO₂ NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation as nonattainment. One of the requirements for states with an SO₂ nonattainment area is the submission of an emissions inventory. Section 172(c)(3) requires the submission of a comprehensive, accurate, current accounting of actual emissions from all sources of the relevant pollutant in the nonattainment area.

II. Summary of West Virginia's Submittal

On May 6, 2015, the West Virginia Department of Environmental Protection (WVDEP) submitted the 2011 base year emissions inventory for the Marshall Area for the 2010 1-hour SO₂

NAAQS to meet the requirements of CAA section 172(c)(3). The base year inventory includes actual annual emissions of SO₂ that cover the general source categories of stationary point sources, stationary nonpoint sources, nonroad mobile sources, and onroad mobile sources. For the purpose of the base year inventory, emissions from the entire county were submitted. WVDEP used emissions from EPA's 2011 National Emissions Inventory (NEI) version 2 for the base year inventory. EPA reviewed the results, procedures, and methodologies for the base year inventory and found them to be acceptable. EPA's technical support document (TSD) for the base year inventory, dated June 8, 2015, is available in the docket for this proposed rulemaking action at Docket ID number EPA-R03-OAR-2015-0411.

III. Final Action

Pursuant to section 172(c) of the CAA, EPA is approving the 2011 base year emissions inventory submitted by the State of West Virginia for the 2010 1-hour SO₂ NAAQS as a revision to the West Virginia SIP. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective on [insert date 60 days after date of publication in the Federal Register] without further notice unless EPA receives adverse comment by [insert date 30 days after date of publication in the Federal Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in

commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is

published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action approving the 2011 base year emissions inventory for the Marshall, West Virginia nonattainment area for the 2010 1-hour SO₂ NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: July 20, 2015.

William C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX—West Virginia

2. In §52.2520, the table in paragraph (e) is amended by adding the entry “2011 Base Year Emissions Inventory for the 2010 1-hour SO₂ standard” at the end of the table to read as follows:

§52.2520 Identification of plan.

* * * * *

(e) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|--|----------------------|---|------------------------|
| * * * * * | * * * | | | |
| 2011 Base Year Emissions Inventory for the 2010 1-hour SO ₂ standard | Marshall, West Virginia 2010 1-hour SO ₂ nonattainment area | 5/6/2015 | [Insert the date of publication in <u>Federal Register</u>] [Insert <u>Federal Register</u> citation] | §52.2531(i) |

3. In §52.2531, paragraph (i) is added to read as follows:

§52.2531 Base year emissions inventory.

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(i) EPA approves as a revision to the West Virginia State Implementation Plan the 2011 base year emissions inventory for the Marshall, West Virginia 2010 1-hour SO₂ nonattainment area submitted by the West Virginia Department of Environmental Protection on May 6, 2015. The 2011 base year emissions inventory for SO₂ includes emissions estimates that cover the general source categories of point sources, nonpoint sources, on road sources, and non-road sources.

[FR Doc. 2015-18760 Filed: 7/30/2015 08:45 am; Publication Date: 7/31/2015]